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Before the  
UNITED STATES COPYRIGHT ROYALTY JUDGES Copyright Royalty Board  
Library of Congress  
Washington, D.C.

*In re*

DETERMINATION OF ROYALTY  
RATES AND TERMS FOR  
EPHEMERAL RECORDING AND  
DIGITAL PERFORMANCE OF SOUND  
RECORDINGS (*WEB IV*)

DOCKET NO. 14-CRB-0001-WR  
(2016-2020)

**COMMENT BY COLLEGE BROADCASTERS, INC. IN SUPPORT OF ADOPTING  
THE JOINT SETTLEMENT BETWEEN COLLEGE BROADCASTERS, INC. AND  
SOUNDEXCHANGE**

**BACKGROUND**

College Broadcasters, Inc. ("CBI") and SoundExchange, Inc. ("SoundExchange") (collectively the "Parties") reached a partial settlement of the above-captioned proceeding (the "Proceeding") for certain internet transmissions by noncommercial educational webcasters ("NEWs"). The Parties submitted the settlement with its proposed regulatory language (the "Settlement") for publication in the Federal Register for notice and comment in accordance with 17 U.S.C. § 801(b)(7)(A) and 37 C.F.R. § 351.2(b)(2). The Copyright Royalty Board ("CRB") accordingly published it for comment on November 5, 2014. 79 Fed. Reg. 65609.

CBI therefore submits the following comment to urge the judges to adopt the Settlement in its entirety as a settlement of rates and terms under Sections 112(e) and 114 of the Copyright Act for eligible nonsubscription transmissions made by noncommercial educational webcasters over the internet, and related ephemeral recordings, as more specifically set forth in the Settlement.

## DISCUSSION

### **I. Introduction**

The CRB must adopt the Settlement if there is no objection to it. 17 U.S.C. § 801(b)(7)(A). If there is an objection, the CRB may then only decline to adopt the Settlement if the "Judges conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates." 17 U.S.C. § 801(b)(7)(A)(ii). As set forth below, this Settlement is indeed reasonable.

### **II. The Settlement largely keeps in place the current statutory rates and terms.**

As part of the preceding rate-setting proceeding establishing the rates and terms for 2011-2015 CBI and SoundExchange had reached a similar settlement, which the CRB then adopted as the statutory rates and terms for NEWs. Although the final determination officially establishing them as the statutory rates and terms only occurred this past April, 79 Fed. Reg. 23102, 23135 (April 25, 2014), an earlier determination establishing them was published in March 2011, 76 Fed. Reg. 13026, 13046 (March 9, 2011), and they are also essentially the same terms published under the Webcaster Settlement Act of 2009. 74 Fed. Reg. 40614, 40616 (August 12, 2009). In other words, these are substantially the same terms that NEWs have been successfully using for several years to comply with the statutory license for webcasting copyrighted works. Keeping these rates and terms in place will prevent disruption to their operation and ensure that noncommercial educational webcasters remains able provide creators of musical recordings access to the noncommercial educational listener market.

### **III. The Settlement applies to a narrowly-defined class of webcasters.**

This Settlement, as with the last settlement, applies to a distinct class of noncommercial webcaster, the noncommercial *educational* webcaster. Although NEWs may share characteristics with other noncommercial webcasters, the proposed regulations apply only to this

narrowly-defined class of webcaster, leaving the CRB free to establish whatever other rates and terms it feels are appropriate for other noncommercial webcasters. The Settlement should therefore be adopted because it is reasonable to continue to ensure that this particular class of webcaster can comply with rates and terms addressing their particular characteristics.

**IV. The Settlement continues the same economic requirements NEWs have been complying with.**

The current Settlement leaves in place the same basic economic requirements as the previous settlement for those paying the minimum fee. Adopting the settlement is reasonable because it means they can continue to comply with the license without adversely affecting their budgets.

**V. The Settlement continues to provide NEWs with much-needed relief from recordkeeping requirements.**

As with the previous settlement, the current Settlement continues essentially the same recordkeeping terms that have been integral for NEWs to be able to comply with the statutory license. In particular, these recordkeeping terms include an optional proxy fee, which allows NEWs to pay an additional \$100 in lieu of complying with ordinarily-applicable recordkeeping rules, which are frequently impossible for NEWs to comply with due to their more limited budgets, older broadcasting technology, and other operational limitations. Notably the new Settlement makes this extremely necessary reporting option available for more stations than the previous one did. It also continues to provide recordkeeping relief for those stations whose audience size makes them ineligible for this proxy option by allowing them to provide recordkeeping data consistent with what is feasible for them to produce. As with the previous agreement, this Settlement also leaves room for webcasters to grow without fearing that if they

inadvertently grow even the tiniest bit too large they will suddenly incur recordkeeping requirements that are impossible to comply with without first making a significant and unaffordable investment in their station technology and operations. It is therefore reasonable to adopt this Settlement because, thanks to these recordkeeping terms, it makes continued webcasting by NEWS something that is viable for them to do.

### CONCLUSION

For the above reasons, the CRB should find the Settlement reasonable and thus adopt it.

Dated: November 26, 2014

Respectfully submitted,

/s/ Catherine R. Gellis

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**From:** cathy.gellis@gmail.com on behalf of Catherine R Gellis <cathy@cgcounsel.com>  
**Sent:** Wednesday, November 26, 2014 8:16 AM  
**To:** crb; Golden, David  
**Subject:** Comments of College Broadcasters, Inc. in response to proposed rule at 69 FR 65609  
**Attachments:** 20141126\_comment\_CBI-SX\_settlement.pdf

Attached please find comments from College Broadcasters, Inc. in support of adopting the settlement in Docket No. 2014-CRB-0001-WR (2016-2020) (Web IV) published on November 5, 2014 at 69 Fed. Reg. 65609.

Thank you,

Catherine R. Gellis  
Counsel for College Broadcasters, Inc.

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